

California Native Plant Society

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September 18, 2020

Mr. Gregory Mattson
Planning & Development Services
5510 Overland Avenue, Suite 310
San Diego, California 92123
By email to: at Gregory.mattson@sdcounty.ca.gov

RE: Additional Information Regarding Carbon Offset Protocols for Greenhouse Gas Emission Reduction for Otay Ranch Resort Village (Village 13) (PDS2004-3810-04-002 (SPA), PDS2004-3810-04-003 (GPA), PDS2004-REZ-3600-04-009 (REZ), PDS2004-3100-5361-VTM, ENV. LOG NO. PDS2004-3910-04-19-005, SCH NO. 2004101058)

Dear Mr. Mattson:

Thank you for the opportunity to comment on this additional information on the Otay Ranch Village 13 ("Project"). CNPS promotes sound plant science as the backbone of effective natural areas protection. We work closely with decision-makers, scientists, and local planners to advocate for well informed and environmentally friendly policies, regulations, and land management practices. Our focus is on California's native plants, the vegetation they form, on keeping both plants and people safe from damaging fires, and on climate change as it affects both.

Since the additional information relates to two climate change mitigation measures, we will largely concentrate our comments on these. We are very concerned with their legality and their feasibility.

First, it is not clear to us that the Project proponents understand the regulatory background under which the Project must be regulated, and this feeds into the use of M-GCC-7 and M-GCC-8. In particular, Executive Order BB-55-18 (cited p. 2.10-8) gives the statewide goal of Californians acting "to achieve carbon neutrality as soon as possible, and not later than 2045, and achieve and maintain net negative emissions thereafter." This is within the period of time set out for carbon offsets, and certainly any sane person would hope that homes built in the 2020s would have not burned down by 2050. Because of this language and the *Newhall*¹ ruling, it seems perfectly appropriate to expect the Project to be carbon negative after 2045, since new developments are better positioned to build in carbon sequestration than are existing systems.

This contrasts rather badly with the impact analysis (p. 2.10-23): "While the Project would result in an obvious change to the existing GHG emissions from the Project site, there is no scientific or regulatory consensus regarding what particular quantity of GHG emissions is considered significant, and there remains no applicable, adopted numeric threshold for assessing

¹ Center for Biological Diversity et al. vs. California Department of Fish and Wildlife Ct.App. 2/5 B245131



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the significance of a project's individual emissions as a direct impact." That impact threshold is given on p. 2.10-8, and it is zero by 2045 and less than zero thereafter. **Since the Project's operational emissions are considerable and the carbon offsets proposed will still be in effect by 2045, why was this threshold not used? Why use the outdated 2016 comment given in footnote 43?**

So the first question is: how much of the construction and operational emissions from the Project are intended to be handled the M-GCC-7 and M-GCC-8? To what degree will the proposed mitigations make the Project attain the goals of Executive Order BB-55-18?

Second, it is not clear to us that climate registries such as the Climate Action Reserve will allow the Project to use carbon offsets to mitigate for their greenhouse gas emissions as proposed. The issue is that Table 2.10-4 (p. 2.10-42) seems to imply that a rather large portion of the 38,476 metric tons from construction and the 33,791 metric tons of greenhouse gases from operations for the first 30 years (until 2062?) will be mitigated through carbon offsets. Unfortunately, according to the Climate Action Reserve Website²: "Under the California Cap-and-Trade Program, compliance entities may use ARB Offset Credits (ARBOCs) to meet up to eight percent of their compliance obligation for emissions through 2020, four percent for emissions from 2021-2025, and six percent for emissions from 2026-2030. Starting in 2021, at least half of the usage limit must come from projects that provide direct environmental benefits in the state (DEBS)."

By our calculation, this means that no more than about 2,308 metric tons of construction emissions (estimated using the 6% limit) and 2,207 metric tons of operational emissions (also estimated at 6%) can be mitigated using carbon offsets. **Is this correct? If not, please clearly explain why not and provide the correct information. What emission tonnage was intended to be mitigated by carbon offsets, and what is the legal justification for doing so, if it is over 4,518 metric tons over the next 40 years of construction and operations?** It appears, from our reading of the documents that there is a serious shortfall in mitigation for greenhouse gas emissions, and we hope that the Project Proponents can provide a clearer accounting of what will be done to get Project emissions to zero by 2045 and negative thereafter, per BB-55-18.

While General Response to comments R-1 asserts that these limits do not apply to the Project, the logic seems questionable. Please clarify it. Specifically, (p. 9) The County asserts:

"The County notes first that such limits do not apply to this land use development project. As discussed above, under CEQA, the County has the discretion to identify and implement appropriate mitigation for identified significant environmental impacts of a project. It is notable that both on-site and off-site GHG reduction activities have been identified here to reduce the proposed Project's GHG emissions.

"Second, such limits should not apply to this Project as the operation of a land use development project is distinct and disparate from the operation of entities regulated under the Cap-and-Trade Program. The Cap-and-Trade Program's typical "covered entities" include electric power plants, large industrial plants, and fuel distributors that are responsible for about 85 percent of California's GHG

² Answer to question 2 at <http://www.climateactionreserve.org/resources/programqandas/>, accessed September 17, 2020

emissions. Entities regulated by the Cap-and-Trade Program, therefore, generally have direct operational control of the long-term GHG emissions from the source profile. On the other hand, land use developers do not have continuing control and authority over most, if not all, of the sources of GHG emissions. For example, homeowners decide when to turn appliances on and off; business owners decide their hours of operation; drivers select the type of vehicle they will operate; etc. Practically speaking, this limits the suite of on-site reduction strategies that a land use developer can use to reduce GHG emissions, unlike those covered entities under the Cap-and-Trade Program.

“Third, the County notes that covered entities (e.g., fuel refineries) regulated by the Cap-and-Trade Program are not presently required by the Program to achieve a level of “net zero” GHG emissions.”

Addressing these three points in order:

The County has discretion over its own land use, but if it plans to use registries to offset the Project greenhouse gas emissions, it must play by registry rules. **Why should the County get special treatment when it must abide by state rules, such as BB-55-18? How can Mitigation Measures M-GCC-7 and M-GCC-8 be effective if the registries put caps on their use?**

Second, if the Project proponents can predict that the Project will result in greenhouse gas emissions, even if they cannot precisely control those emissions, assuming they have any way to cause those emissions to not happen, should they not be required to undertake such measures? A simple example of emissions under the developer’s control in this Project is the developer’s insistence on installing natural gas in the development, even though it substantially contributes to greenhouse gas emissions from the Project. The developer does not have to quantify how much people will use their appliances for us all to know that installing all electric systems will bring this particular set of emissions to zero within the Project. **Why do the Project proponents not take responsibility for doing this and other measures? Why depend so much on M-GCC-7 and M-GCC-8, and not other mitigation measures?**

To avoid the worst outcomes from climate change, greenhouse gases need to either not be emitted or to come out of the air and stay out for a century or more. **Why should these developers be given special treatment and allowed to hardwire emissions into this Project? Why should the County not honor the needs of current residents and not impose on us to mitigate the carbon emissions from Village 13?**

Third, as noted on p. 2.10-8, the regulatory environment under which the Project is operating includes BB-55-18. Therefore, Village 13 is required to become carbon neutral before 2045 and to be carbon negative thereafter, along with the rest of us. To do otherwise appears to violate the standards of the *Newhall* case. **If M-GCC-7 and M-GCC-8 are inadequate for the Project to meet the requirements of BB-55-18, what else can be done?**

Third, it is not clear if there are sufficient carbon offsets available for the Project for mitigation measures M-GCC-7 and M-GCC-8, especially if it proposes to mitigate more than 4,500 metric tons of CO₂e emissions. Of the three registries listed (Climate Action Reserve, American Carbon Registry, and Verra), only Climate Action Reserve lists a project in San Diego County (CAR505, Cuyamaca Rancho State Park Reforestation). That project is listed as “not

eligible for ARB credits” as it has missed some reporting deadlines. The most recent documentation in the Project file is from 2014. **Is the Village 13 Project intending to buy credits at Cuyamaca? Has it vetted this site for compliance with the law and the registry? Is it projected to have carbon credits available when they are needed? Where is this information in the EIR?**

Of the registered projects statewide, most are in northern California. A majority of these are forestry projects of one sort or another. The question then becomes: **how secure are they against wildfires and other losses, such as drought or flooding? What will the County do if a carbon offset project is destroyed and emits all the carbon sequestered, thus voiding the mitigation?** The County has an obligation to become carbon neutral before 2045, so it is still on the hook, physically speaking, for getting its greenhouse gases out of the air and keeping them out of the air, whether the means it chooses to use now work or not.

This leads to a more general issue: deferred mitigation. While it is good that the County is attempting to use accepted protocols for carbon offsets through M-GCC-7 and M-GCC-8, adoption of a protocol is not the same thing as mitigating an impact. **To purchase an offset, the offset must be available at the time that it is needed in the quantity needed, and with the characteristics needed. Where are the guarantees in these two mitigation measures that such offsets have been contracted for? Are they even available? What due diligence measures have been and will be undertaken to determine if the mitigation measures used will actually work for the time period specified? What happens if these mitigation measures fail? Who pays the costs for making them right if they fail? If M-GCC-7 and M-GCC-8 are simply protocols, how are they not deferring the mitigation until after the Project is approved?**

Is it cheaper to find additional means within the Project to design and build in emission reductions? Taking out the natural gas is a simple, obvious measure. **What other simple measures could be taken to take the burden off M-GCC-7 and M-GCC-8?**

Fourth, what is the timeline for mitigations M-GCC-7 and M-GCC-8? It appears that the Project proponents believe that the project’s lifetime is 30 years. **Is the assumption that this starts after 11 years of construction, or starting from permitting? Is the assumption that all the houses will be gone by 2051 or 2062 (burned by wildfire, perhaps?)? If the buildings are still standing after 2050, who is responsible for “operational emissions” of the Project in perpetuity? How will these net emissions be made negative? Will these people responsible be made aware of their responsibility? If the notion is that the Project will not exist after its design lifetime (30 year?), who will notify the purchasers and residents of the Project’s temporary nature?**

To reiterate, but we need to become carbon neutral before 2045. This isn’t just Governor Brown’s daydream. Climate change is a growing crisis affecting the continued existence of the state of California as a political entity where millions of people and thousands of native species live. If we can no longer live here, where will we go? It is extraordinarily problematic to design future emissions into currently proposed projects, then to leave future residents responsible for mitigating those emissions without even notifying them of their responsibility. It is far better to design projects that meet the changes that will happen during their design lifetime. In this case, Village 13 needs to be designed to be very fireproof, carbon neutral, and livable without the use of fossil fuels. Otherwise, it is simply not worth building.

Finally, GCC-7 and GCC-8 in their revised form violate the central principle of CEQA that an EIR must include enough detail "to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project."³ GCC-7 and GCC-8 state that the County has reviewed the protocols and methodologies in GCC-7 Attachment A ("Attachment A"), which includes over 5,000 pages of policies and manuals from the 3 programs. The County has "determined that such protocols and methodologies...are eligible for use under this mitigation measure." However, we found not a shred of evidence or analysis in the EIR that reveals how the County came to this determination, or what criteria was used to determine that the protocols and methodologies are appropriate. As discussed at length in *Sierra Club v. County of San Diego*,⁴ a County cannot rely on the fact that a protocol or methodology was developed by a climate registry alone as proof that the protocol is real, verifiable, etc. An EIR must "disclose the analytic route the agency traveled from evidence to action."⁵ If the public is going to properly engage with this project, the EIR needs to provide the basic information that informs the public about how the County arrived at its conclusion that the protocols and methodologies developed in Attachment A are appropriate. **Where is that analysis?**

Thank you for taking these comments. Please keep us informed of all developments on this project, at conservation@cnpsd.org and franklandis03@yahoo.com.

Stay safe,



Frank Landis, PhD
Conservation Chair, CNPSSD

³ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 511-512.

⁴ *Sierra Club v. County of San Diego* (Case No. D075478)

⁵ *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 205 [internal punctuation omitted].